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7 *Attorneys for Defendants*

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA  
10

11 ZURICH AMERICAN INSURANCE  
12 COMPANY,

13 Plaintiff,

14 v.

15 AMERICAN WEST HOMES, INC., a  
Nevada corporation; WHITNEY RANCH,  
16 INC., a Nevada corporation; FEDERAL  
LANDS MANAGEMENT LLC, a Nevada  
17 limited liability company; CACTUS SAND  
& GRAVEL, INC., a Nevada corporation;  
18 WEST MESA, LLC, a Nevada limited  
liability company; CORONADO HILLS,  
19 LLC, a Nevada limited liability company;  
ADAVEN MANAGEMENT, INC., a  
20 Nevada corporation; LAWRENCE  
CANARELLI, as trustee of THE  
21 CANARELLI FAMILY TRUST DATED  
SEPTEMBER 14, 1990; LAWRENCE AND  
22 HEIDI CANARELLI, as trustees of THE  
LAWRENCE AND HEIDI CANARELLI  
23 1993 IRREVOCABLE TRUST;  
LAWRENCE CANARELLI and HEIDI  
24 CANARELLI, as trustees of the THE  
STACIA LEIGH LEMKE IRREVOCABLE  
25 TRUST; LAWRENCE CANARELLI and  
HEIDI CANARELLI, as trustees of THE  
26 JEFFREY LAWRENCE GRAVES  
CANARELLI IRREVOCABLE TRUST; ED  
27 LUBBERS, as trustee of THE SCOTT  
LYLE GRAVES CANARELLI  
28 IRREVOCABLE TRUST; LAWRENCE

Case No. 2:15-cv-01815-MMD-GWF

~~**PROPOSED**~~ **STIPULATED**  
**PROTECTIVE ORDER**

CANARELLI and HEIDI CANARELLI, as  
trustees of THE ALLYSA LAUREN  
GRAVES CANARELLI IRREVOCABLE  
TRUST; LAWRENCE D. CANARELLI and  
HEIDI CANARELLI, individually; DOES  
I-X; and ROE COMPANIES XI-XX,  
inclusive.

Defendants.

AND RELATED COUNTERCLAIMS.

The parties to this action, by their respective counsel, having agreed to the following, and for good cause shown, IT IS HEREBY ORDERED as follows:

**1. PURPOSE AND LIMITATIONS.**

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure may be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under law to treatment as confidential.

**2. SCOPE.**

All documents produced in the course of discovery, all responses to discovery requests, and all deposition testimony and exhibits and any other materials which may be subject to discovery, including subpoenaed documents (hereinafter collectively “documents”), shall be subject to this stipulated protective order concerning confidential information as set forth below. Any party, or any third party who produces documents in this litigation, may designate documents as CONFIDENTIAL but only after review of the documents by an attorney who has, in good faith, determined that the documents contain “Confidential Information,” as defined below, and pursuant to the procedure set forth below.

**3. CONFIDENTIAL INFORMATION.**

“Confidential Information” shall mean information, testimony, document, or thing that contains confidential or proprietary information, such as trade secret, financial information, or

1 commercial information concerning a business's customers, vendors, personnel and operations.  
2 Nothing in this paragraph shall be construed as an exclusion of any other material from the  
3 definition of "Confidential Information."

4 Confidential Information does not include information that: (a) is in the public domain at  
5 the time of disclosure; (b) becomes part of the public domain through no fault of the Receiving  
6 Party; (c) the Receiving Party can show was in its rightful and lawful possession at the time of  
7 disclosure; or (d) the Receiving Party lawfully receives from a Non-party later without restriction  
8 as to disclosure. Notwithstanding the foregoing, to the extent Plaintiff has in its rightful and  
9 lawful possession any documents protected by the attorney-client or work product privilege that  
10 it obtained through its participation in the defense and indemnification of American West  
11 Homes, Inc. and/or American West Development, Inc. in litigation matters, such documents shall  
12 be treated as "Confidential Information." The Parties have the right and ability to mark such  
13 documents "Confidential," even if Plaintiff already has those documents in its rightful and lawful  
14 possession at the time of disclosure in this matter.

15 **4. OTHER DEFINITIONS.**

16 Party: any party to this action and attorney(s) of record for a Party in this action, including  
17 their associates, paralegals, and support/clerical staff.

18 Non-party: any individual, corporation, association, or natural person or entity other than  
19 a Party.

20 Protected Material: any disclosure or discovery material that is designated by a Party or  
21 Non-party as "CONFIDENTIAL," unless the Receiving Party challenges the confidentiality  
22 designation and (a) the Court decides such material is not entitled to protection as confidential;  
23 (b) the Designating Party fails to apply to the Court for an order designating the material  
24 confidential within the time period specified in Section 5 below; or (c) the Designating Party  
25 withdraws its confidentiality designation in writing.

26 Producing Party: a Party or Non-party that produces disclosures or discovery material in  
27 this action.  
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1           Receiving Party: a Party that receives disclosures or discovery material from a Producing  
2 Party.

3           Designating Party: a Party or Non-party that designates information or items that it  
4 produces in disclosures or in responses to discovery as Protected Material. The Party or Non-  
5 party designating information or items as Protected Material bears the burden of establishing  
6 good cause for the confidentiality of all such items.

7           Challenging Party: a party that elects to initiate a challenge to a Designating Party's  
8 confidentiality designation.

9           **5. FORM AND TIMING OF DESIGNATION.**

10           Protected Material shall be so designated by the Producing Party by placing or affixing  
11 the word "CONFIDENTIAL" on the document in a manner which will not interfere with the  
12 legibility of the document and which will permit complete removal of the "CONFIDENTIAL"  
13 designation. Documents shall be designated "CONFIDENTIAL" prior to, or contemporaneously  
14 with, the production or disclosure of the documents.

15           Portions of depositions shall be deemed CONFIDENTIAL only if designated as such  
16 when the deposition is taken or within fourteen business days after receipt of the transcript. Such  
17 designation shall be specific as to the portions to be protected.

18           A Designating Party must exercise restraint and make good faith efforts to limit  
19 "CONFIDENTIAL" designations to specific materials that qualify for protection under the  
20 appropriate standards.

21           Inadvertent or unintentional production of Protected Material without prior designation as  
22 "CONFIDENTIAL" shall not be deemed a waiver, in whole or in part, of the right to designate  
23 documents as Protected Material as otherwise allowed by this Order. Further, a Party may assert  
24 that disclosures or discovery material produced by another Party constitute Protected Material  
25 by informing the opposing Party by following the procedures set forth herein for a Designated  
26 Party.

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1                   **6. PROTECTION OF PROTECTED MATERIAL.**

2                   **a. General Protections.** Protected Material shall not be used or disclosed by  
3 the parties or counsel for the parties or any other persons identified below (§ 6.b.) for any purposes  
4 whatsoever other than preparing for and conducting this litigation (including any appeal).

5                   **b. Qualified Receiving Parties and Limited Third Party Disclosures.**

6                   Protected Material shall be held in confidence by each qualified Receiving Party to whom  
7 it is disclosed, shall be used only for purposes of this action, and shall not be disclosed to any  
8 person who is not a qualified recipient. All Protected Material shall be carefully maintained so as  
9 to preclude access by persons who are not qualified Receiving Parties.

10                  Subject to these requirements, in addition to Parties and the Court, the following  
11 categories of persons may be allowed to review Protected Material pursuant to this Order after  
12 executing an acknowledgment (in the form set forth at Exhibit A hereto), that he or she has read  
13 and understands the terms of this Order and is bound by it:

14                  (1) Any officers, directors, or designated employees of a Party deemed necessary by  
15 counsel of record in this action to aid in the prosecution, defense, or settlement of this action;

16                  (2) Professional outside vendors for attorneys of record (such as copying services and  
17 translators and interpreters);

18                  (3) Deposition notaries and staff;

19                  (4) The author of any document designated as CONFIDENTIAL or the original source  
20 of Confidential Information contained therein;

21                  (5) Persons other than legal counsel who have been retained or specially employed by  
22 a party or the party's legal counsel for the purposes of this lawsuit, such as expert witnesses,  
23 consultants, and investigators;

24                  (6) Deponents during the course of their depositions;

25                  (7) Counsel for issuers of insurance policies under which any issuer may be liable to  
26 satisfy part or all of a judgment that may be entered in these proceedings or indemnify or  
27 reimburse payments or costs associated with these proceedings;

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1 (8) Any private mediator or arbitrator appointed by the Court or selected by mutual  
2 agreement of the parties and the mediator or arbitrator's secretarial and clerical personnel; and,

3 (9) Any other person as to whom the Producing Party has consented to disclosure in  
4 advance and in writing, on notice to each Party hereto.

5 c. **Control of Documents.** Counsel for Parties shall take reasonable efforts  
6 to prevent unauthorized disclosure of Protected Material pursuant to the terms of this Order. No  
7 copies of Protected Material shall be made except by or on behalf of attorneys of record, in-  
8 house counsel or the parties in this action.

9 d. **Copies.** Any person making copies of Protected Material shall maintain all  
10 copies within their possession or the possession of those entitled to access to such information  
11 under the Protective Order. All copies shall be immediately affixed with the designation  
12 "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be  
13 afforded the full protection of this Order.

14 **7. UNAUTHORIZED DISCLOSURE.**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
16 Material to any person or in any circumstance not authorized under this Stipulated Protective  
17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
18 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
19 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms  
20 of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
21 Agreement to Be Bound by Stipulated Protective Order" (Exhibit A).

22 **8. FILING OF PROTECTED MATERIALS; PROTECTED MATERIALS IN**  
23 **COURT.**

24 Subject to the Federal Rules of Evidence, Protected Material may be filed with the Court  
25 or offered in evidence or hearing or trial of this case. This Order does not seal court records in  
26 this case or apply to disclosure of Protected Material at trial. Further, the parties understand that  
27 documents may be filed under seal only with the permission of the Court after proper motion.  
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1 Further, the fact that documents have been designated as “CONFIDENTIAL” shall not be  
2 admissible evidence that the documents in fact contain information entitled to protection from  
3 disclosure under the law.

4 However, in the event a Party seeks to file Protected Materials with the Court, those  
5 documents shall be filed under seal pursuant to Rule 10-5(b) of the Local Rules of Practice for  
6 the U.S. District Court of Nevada and the Ninth Circuit’s decision in *Kamakana v. City and*  
7 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). The Party filing such Protected Materials  
8 may assert in the accompanying motion any reasons why the Protected Materials should not, in  
9 fact, be kept under seal and the Designating Party, who must be properly noticed, may likewise  
10 file a motion to assert its position that the Protected Material merits protection under Rule 26(c)  
11 of the Federal Rules of Civil Procedure. In such instances, absent extraordinary circumstances  
12 making prior consultation impractical or inappropriate, the Party seeking to submit the Protected  
13 Material to the Court shall first consult with the Designating Party. If the sole ground for a  
14 motion to seal is that the opposing party (or non-party) has designated a document as subject to  
15 protection pursuant to this Stipulated Protective Order, the movant must notify the opposing  
16 party (or non-party) at least seven days prior to filing the designated document. The Designating  
17 Party must then make a good faith determination if the relevant standard for sealing is met. To  
18 the extent the Designating Party does not believe the relevant standard for sealing can be met, it  
19 shall indicate that the document may be filed publicly no later than four days after receiving  
20 notice of the intended filing. To the extent the Designating Party believes the relevant standard  
21 for sealing can be met, it shall provide a declaration supporting that assertion no later than four  
22 days after receiving notice of the intended filing. The filing party shall then attach that  
23 declaration to its motion to seal the designated material. If the Designating Party fails to provide  
24 such a declaration in support of the motion to seal, the filing party shall then file a motion to seal  
25 so indicating and the Court may order the document filed in the public record.

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1           **9.       CHALLENGES TO PROTECTED MATERIAL.**

2           Any designation of Protected Material is subject to challenge. The following procedures  
3 shall apply to any such challenge:

4               **a.       Burden.** The burden of proving the necessity of a “CONFIDENTIAL”  
5 designation remains with the party asserting confidentiality.

6               **b.       Notice; Opportunity to Challenge.** A party who contends that Protected  
7 Material is not entitled to confidential treatment shall give written notice to the party who affixed  
8 the “CONFIDENTIAL” designation of the specific basis for the challenge. The party who so  
9 designated the documents shall have ten (10) days from service of the written notice to determine  
10 if the dispute can be resolved without judicial intervention and, if not, to move for an Order  
11 confirming the “CONFIDENTIAL” designation, and the status as Protected Material.

12               **c.       Treatment as Protected Material Until Order or Withdrawal.**  
13 Notwithstanding any challenge to the designation of documents as such, all material previously  
14 designated “CONFIDENTIAL” shall continue to be treated as Protected Material subject to the  
15 full protections of this Order until one of the following occurs: (1) the Party who claims that the  
16 documents are Protected Material withdraws such designation in writing; (2) the Party who  
17 claims that the documents are confidential fails to move timely for an Order designating the  
18 documents as confidential as set forth in paragraph 9.b. above; or (3) the Court rules that the  
19 documents are not Protected Material and/or should no longer be designated as  
20 “CONFIDENTIAL.”

21               **d.       No Waiver.** Challenges to the confidentiality of documents may be made  
22 at any time and are not waived by the failure to raise the challenge at the time of initial disclosure  
23 or designation.

24           **10.       DURATION; CONCLUSION OF LITIGATION.**

25           All provisions of this Order restricting the use of Protected Material shall continue to be  
26 binding after the conclusion of the litigation unless otherwise agreed or ordered. Within 30 days  
27 of the final termination of this matter, which would be either a final judgment on all claims or  
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1 stipulation and order for dismissal with prejudice, all documents and information designated as  
2 CONFIDENTIAL by a Designating Party and which has not been challenged, including any  
3 copies, or documents containing information taken therefrom, shall be returned to the  
4 Designating Party. In the alternative, within 30 days of the final termination of this case, which  
5 would be either a final judgment on all claims or stipulation and order for dismissal with  
6 prejudice, all such documents, including copies, may be shredded or disposed of in a manner to  
7 ensure the destruction thereof and a declaration certifying such destruction or disposal provided  
8 to the Designating Party. To the extent a party has designated portions of a deposition transcript  
9 as CONFIDENTIAL, the non-designating party shall dispose of or completely redact those  
10 portions deemed CONFIDENTIAL, but is under no obligation or duty to shred or dispose of the  
11 remainder of the deposition transcript that was not designated CONFIDENTIAL.

12 **11. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
13 **IN OTHER LITIGATION.**

14 If a Party is served with a subpoena or an order issued in other litigation that would compel  
15 disclosure of Protected Material designated by another Party or Non-party, the Party must so  
16 notify the Designating Party, in writing (by e-mail or fax, if possible) within three (3) court days  
17 after receiving the subpoena or order. Such notification must include a copy of the subpoena or  
18 court order.

19 **12. ORDER SUBJECT TO MODIFICATION.**

20 This Order shall be subject to modification on motion of any Party or any other person  
21 who may show an adequate interest in the matter to intervene for purposes of addressing the  
22 scope and terms of this Order. The Order shall not, however, be modified until the Parties shall  
23 have been given notice and an opportunity to be heard on the proposed modification.

24 **13. NO JUDICIAL DETERMINATION.**

25 This Order is entered based on the representations and agreements of the Parties and for  
26 the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial  
27 determination that any specific document or item of information designated as CONFIDENTIAL  
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by counsel is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

**14. MISCELLANEOUS.**

**a. Right to Further Relief.** Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

**b. Right to Assert Other Objections.** By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

**15. PERSONS BOUND UPON ENTRY OF ORDER.**

This Order shall take effect when entered and shall be immediately binding upon the Parties (as defined herein).

Dated this 6<sup>th</sup> of April, 2016.

MAUPIN • NAYLOR • BRASTER

By: /s/ Jennifer L. Braster  
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*Attorneys for the Defendants*

Dated this 6<sup>th</sup> of April, 2016.


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**IT IS SO ORDERED.**

  
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GEORGE FOLEY, JR.  
United States Magistrate Judge

DATED: April 8, 2016

**EXHIBIT A**

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**ACKNOWLEDGMENT OF UNDERSTANDING  
AND AGREEMENT TO BE BOUND**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

ZURICH AMERICAN INSURANCE  
COMPANY,

Plaintiff,

v.

AMERICAN WEST HOMES, INC., a  
Nevada corporation; WHITNEY RANCH,  
INC., a Nevada corporation; FEDERAL  
LANDS MANAGEMENT LLC, a Nevada  
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& GRAVEL, INC., a Nevada corporation;  
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inclusive.

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 2:15-cv-01815-MMD-GWF

**ACKNOWLEDGMENT OF  
UNDERSTANDING AND  
AGREEMENT TO BE BOUND**

The undersigned acknowledges that violation of the Stipulated Protective Order may result in penalties for contempt of court.

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Date Signature